

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE COUNTY OF MCHENRY AND THE MCHENRY TOWNSHIP ROAD DISTRICT  
FOR THE IMPROVEMENTS MADE AND MAINTENANCE RESPONSIBILITIES OF  
THE SOUTH SECTION OF ORCHARD BEACH ROAD**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this 21<sup>st</sup> day of JULY, 2020, by and between the COUNTY OF MCHENRY, Illinois, a body politic and corporate of 2200 North Seminary Avenue, Woodstock, Illinois 60098, acting by and through its County Board, (hereinafter referred to as "COUNTY"), and the MCHENRY TOWNSHIP ROAD DISTRICT, a unit of local government of 3703 North Richmond Road, Johnsburg, Illinois 60051 (hereinafter referred to as "ROAD DISTRICT").

WITNESSETH

WHEREAS, on August 2, 2016, the COUNTY approved Resolution R-201608-82-192 creating the Nondedicated Subdivision Road Construction Program; and

WHEREAS, said resolution named specific Nondedicated Subdivision Roads (hereinafter referred to as "NSRs") that were to immediately become part of the County Highway System upon approval by the Illinois Department of Transportation (hereinafter referred to as "IDOT") which included the following streets, further described and depicted in Exhibit A, attached hereto and incorporated herein, (hereinafter referred to as the "McHenry Township Roads"):

1. Bay View Court from Bay View Lane to dead end;
2. Beach Drive from Lake Shore Drive to Wonder Lake Road;
3. Hilltop Drive from Beach Drive to Sunset Drive;
4. Regner Road from Bay Road to Wooded Lane;
5. Wooded Lane from Regner Road to Magellan Drive;
6. Magellan Drive from Wooded Lane to Regner Road;
7. Fair Oak Lane from Emerald Drive to River Road;
8. Mid Oak Lane from Emerald Drive to River Road;
9. Elm Oak Lane from Emerald Drive to River Road;
10. Orchard Beach Road from north of Kashmiri Avenue to Shorewood Drive;
11. Hayden Drive from Riverdale Drive to Stafford Drive;
12. Stafford Drive from south of Hayden Drive to north of Shady Hollow Lane;
13. Shady Hollow Lane from Riverdale Drive to Stafford Drive;
14. Boston Road from East Lakeshore Drive to Wonder Lake Road;
15. MacArthur Avenue from Hilltop Drive to Wonder Lake Road;
16. Lookout Drive from Harbor Road to Wonder Lake Road;
17. Nantucket Drive from East Lakeshore Drive to Wonder Lake Road;
18. Lynn Road from East Lakeshore Drive to Hilltop Drive;
19. Cambridge Road from East Lakeshore Drive to Hilltop Drive;
20. Hilltop Drive from south of Cambridge Road to north of Nantucket Drive;
21. Harbor Road from Hilltop Drive to Nantucket Drive;
22. East Lakeshore Drive from Cambridge Road to Nantucket Drive;
23. Mineral Springs Drive from dead end to River Road;
24. Clement Lodge (N) from Clement Lodge (S) to River Road;
25. Clement Lodge (S) from Mineral Springs Drive to River Road;

26. Orchard Beach Road from McHenry city limit to Kama Avenue;
27. Quinn Road from River Road to dead end;
28. Kama Avenue from Mogra Drive to Orchard Beach Road;
29. Henzada Avenue from Sterling Drive to dead end east of Mogra Drive;
30. Kashmiri Avenue from Sterling Drive to Orchard Beach Road;
31. Mogra Drive from Kama Avenue to Henzada Avenue;
32. Orchard Beach Road from Kama Avenue to north of Kashmiri Avenue;
33. MacArthur Drive from Beach Avenue to Flanders Road;
34. Howe Drive from Wonder Woods Drive to dead end;
35. Woodlane Drive from Wonder Woods Drive to Howe Drive;
36. West Lakeshore Drive from Willow Drive to north of Cross Drive;
37. Oak Drive from Wonder Woods Drive to West Lakeshore Drive;
38. Hickory Drive from Wonder Woods Drive to West Lakeshore Drive;
39. Chestnut Drive from west of Wonder Woods Drive to West Lakeshore Drive;
40. Willow Drive from West Lakeshore Drive to Cypress Drive;
41. Cross Drive from Wonder Woods Drive to West Lakeshore Drive;
42. Cypress Drive from Wonder Woods Drive to West Lakeshore Drive;
43. Hill Drive from west of Wonder Woods Drive to Wonder Woods Drive;
44. Fir Drive from west of Wonder Woods Drive to Wonder Woods Drive;
45. Lone Tree Drive from west of Wonder Woods Drive to Wonder Woods Drive; and,
46. Court Street from White Oaks Road to Cypress Drive.,

WHEREAS, the McHenry Township Roads total 7.70 miles; and

WHEREAS, the NSRs, including the McHenry Township Roads, function more as local streets than as regional highways; and

WHEREAS, the McHenry Township Roads are within the ROAD DISTRICT limits and not within any municipal limits; and

WHEREAS, Section 5/5-105 of the Illinois Highway Code grants the authority to make changes to the county highway systems by resolution of the county board and subject to the approval of IDOT; and

WHEREAS, Section 5/6-201.3 of the Illinois Highway Code grants the authority to make changes to the township road district system to the highway commissioner; and

WHEREAS, the transfer of jurisdiction over the McHenry Township Roads will provide for the ROAD DISTRICT control of the McHenry Township Roads and will be beneficial to the residents of both the ROAD DISTRICT and the COUNTY.

WHEREAS, the COUNTY and the ROAD DISTRICT are units of local government authorized by the Illinois Constitution (ILL. CONST. ART. VII, Section 10) and Intergovernmental Cooperation Act 5 ILCS 220/1 *et seq.* to contract with each other and otherwise agree amongst themselves and undertake certain transactions with each other to perform jointly any governmental purpose or undertaking any of them could do singularly.

WHEREAS, on March 20, 2019, the COUNTY approved Resolution R-201903-82-65

approving and IGA between the COUNTY and ROAD DISTRICT for the jurisdictional transfer of COUNTY highways located in the ROAD DISTRICT as part of the Nondedicated Subdivision Road Construction Program; and

WHEREAS, to transfer various COUNTY highways that are part of the Nondedicated Subdivision Road Construction Program within the ROAD DISTRICT from the COUNTY to the ROAD DISTRICT and to have the ROAD DISTRICT take jurisdiction of said roads and improve them through an Intergovernmental Agreement; and

WHEREAS, Orchard Beach Road from the McHenry city limit to Kama Avenue was included as part of that list of transfers; and

WHEREAS, Orchard Beach Road from the McHenry city limit to Kama Avenue within ROAD DISTRICT totals 0.4 miles; and

WHEREAS, Orchard Beach Road from the McHenry city limit to Kama Avenue is scheduled to be improved as part of the IGA between the COUNTY and ROAD DISTRICT in 2020; and

WHEREAS, Orchard Beach Road from Kennedy Drive to the McHenry city limit totals 0.27 miles; and

WHEREAS, the ROAD DISTRICT has already gone out to bid for the reconstruction of the sections of Orchard Beach Road; and

WHEREAS, the ROAD DISTRICT section of Orchard Beach Road from McHenry City limit to Kama Avenue will be paid according to the approved IGA and approved Resolution R-201903-82-65; and

WHEREAS, the Orchard Beach Homeowners Association has agreed to contribute TWENTY-FIVE THOUSAND DOLLARS AND NO/100 (\$25,000.00); and

WHEREAS, the COUNTY has agreed to contribute an amount not to exceed EIGHTY-EIGHT THOUSAND DOLLARS AND NO/100 (\$88,000.00); and

WHEREAS, the ROAD DISTRICT has agreed to contribute the amount necessary to complete the improvements beyond the ONE HUNDRED THIRTEEN DOLLARS AND NO/100 (\$113,000) which has been committed to by the COUNTY and HOMEOWNERS ASSOCIATION; and

WHEREAS, the COUNTY portion of the contribution will be paid for at the end of the project.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the COUNTY and the ROAD DISTRICT mutually agree as follows:

1. Recitals. The above recitals are in integral part of this Agreement and are incorporated herein.

2. Lead Agency. The ROAD DISTRICT shall be the lead agency for purposes of this Agreement.

3. Jurisdictional Boundaries. The parties agree to transfer jurisdiction of Orchard Beach from the McHenry City limit to Kama Avenue from the COUNTY to the ROAD DISTRICT, and the maintenance, repair, and upkeep will be accomplished as appropriate per the requirements of the Illinois Highway Code (605 ILCS 5/6-201.7, 5/6-201.8). Said transfer shall be completed as follows:

4. Road District Duties. Upon execution of this Agreement, the ROAD DISTRICT shall assume maintenance responsibility of both sections of Orchard Beach Road from Kennedy Drive to Kama Avenue with a total length of 0.67 miles. The ROAD DISTRICT shall perform any necessary pot hole repairs, perform basic asphalt and gravel maintenance, perform debris removal, tree trimming, maintenance of culverts and street sweeping, plow and spread anti-icing agents/materials on the improved portions of Orchard Beach Road. The ROAD DISTRICT is authorized to subcontract and assign the work described in this Agreement at the sole discretion of the ROAD DISTRICT. The COUNTY will have no maintenance responsibilities of either section of Orchard Beach Road before, during or post construction of the improvement project.

5. Road Improvements. The parties agree Orchard Beach Road from Kennedy Drive to McHenry city limit shall be improved within the existing prescriptive right-of-way by the ROAD DISTRICT, unless additional right-of-way or easements are obtained by the ROAD DISTRICT, as set forth as follows:

a. Road District's Duties.

i. Minimum Improvements to be Made. The ROAD DISTRICT shall, at a minimum, resurface Orchard Beach Road, including, but not limited to, removing the top 2 inches of pavement and replacing it with 2.25 inches of pavement. The ROAD DISTRICT shall perform some nominal drainage work, as needed on Orchard Beach Road. The Minimum Improvements to be made by the ROAD DISTRICT shall be in accordance with the engineering plans further described and depicted in Exhibit B, attached hereto and incorporated herein.

ii. Engineering. The ROAD DISTRICT shall be responsible for all engineering, including, but not limited to, surveying, pavement and soil analysis, stormwater drainage analysis, roadway design, preparing plans and specifications for contract bidding and utility coordination, construction engineering services, documenting existing conditions, coordinating and attending preconstruction and construction meetings, governmental entity coordination, resident coordination, marking, measuring and documenting contract removal pavement, and observing construction is performed in general conformance with the approved plans and specifications (all herein referred to as "Engineering Costs") and shall pay invoices received from an engineer qualified to perform the work pursuant to the agreement between them. Engineering Costs shall be included in the ROAD DISTRICT'S

contribution and paid out of the low bid total contributions of TWO HUNDRED FIVE THOUSAND, SIX HUNDRED TWENTY-SIX DOLLARS AND 36/100 (\$205,626.36).

iii. Construction. The ROAD DISTRICT shall be responsible for all construction and shall pay invoices received from the lowest responsible bidder qualified to perform the construction pursuant to the agreement between them. A copy of the contract shall be provided to the COUNTY.

iv. Township Motor Fuel Tax Funds. If the ROAD DISTRICT elects to use any of its Motor Fuel Tax funds in relation to this Agreement, the ROAD DISTRICT shall comply with all IDOT and COUNTY procedures and requirements.

v. Certificates of Completion and Lien Waivers. Prior to requesting any final payments as set forth in below, the ROAD DISTRICT shall certify that it has completed that portion of the improvements Orchard Beach from Kennedy Drive to the McHenry city limit for which it is requesting payment by providing the COUNTY an executed Certificate of Completion. Said Certificate of Completion shall be similar in substance and form to IDOT's Local Agency Certification to Accompany Engineer's Final Payment Estimate. In addition, the ROAD DISTRICT shall certify that it has paid for the work completed for that portion of the improvements to Orchard Beach from Kennedy Drive to the McHenry city limit for which it is requesting payment by providing the COUNTY executed lien waivers to date or final lien waivers, as applicable.

vi. Contribution and Payment. The ROAD DISTRICT will contribute FORTY-EIGHT THOUSAND, SIX HUNDRED TWENTY-SIX DOLLARS AND 36/100 (\$48,626.36). The ROAD DISTRICT shall be responsible for invoicing the COUNTY and HOMEOWNERS ASSOCIATION for their contributions as set forth herein and shall include copies of all lien waivers and certificates of completion.

b. County's Duties.

i. Permit Fees. The COUNTY shall waive its regular permit fees, if any, for Orchard Beach from Kennedy Drive to the McHenry city limit; however, any fees as a result of the ROAD DISTRICT requesting any expedited review shall be the responsibility of the ROAD DISTRICT.

ii. Maximum Amount to be Paid. The COUNTY will contribute no more than EIGHTY-EIGHT THOUSAND AND NO/100 (\$88,000.00).

c. Deviations from bid. Any amount that exceeds the low bid of the contract value of TWO HUNDRED FIVE THOUSAND, SIX HUNDRED TWENTY-SIX DOLLARS AND 36/100 (\$205,626.36) will be paid for by the ROAD DISTRICT.

6. Indemnification. The ROAD DISTRICT shall indemnify and hold harmless the COUNTY, its elected officials, agents, and employees from and against any and all lawsuits, claims, demands, liabilities, injuries, including deaths, losses and expenses, including court costs and attorneys' fees, arising out of the ROAD DISTRICT's performance of this Agreement, including the actions or conduct of its elected officials, employees, agents, independent contractors or assigns, except to the extent caused by the gross negligence or willful misconduct of the COUNTY and/or its elected officials, agents, or employees.

7. Notices. All notices required by this Agreement shall be delivered by first class, certified, or registered U.S. Mail to the respective parties at the following address:

If to the County:                   McHenry County Division of Transportation  
16111 Nelson Road  
Woodstock, Illinois 60098  
Attention: Joseph R. Korpalski, Jr., P.E.  
Director of Transportation/County Engineer

If to the Road District:       McHenry Township Road District  
3703 North Richmond Road  
Johnsburg, Illinois 60051  
Attention: James E. Condon, P.E.  
McHenry Township Highway Commissioner

8. Parties Independent. It is mutually agreed by and between the parties hereto that nothing contained in this Agreement is intended nor shall be construed in any manner or form as creating or establishing a relationship as partners between the parties hereto, or as constituting the ROAD DISTRICT and the CITY OF McHENRY (including its elected officials, duly appointed officers, agents, employees and representatives) or the COUNTY (including its elected officials, duly appointed officers, agents, employees, and representatives) as agent of the other party for any purpose, or in any manner, whatsoever. The COUNTY, the ROAD DISTRICT and the CITY OF McHENRY are to be and shall remain independent of each other with respect to all services performed under this Agreement.

9. Rights of Third Parties. Nothing herein shall be construed to create any rights or duties to third parties, it being the parties' mutual intent that there be no third party beneficiaries to this Agreement. Any allocation of costs, duties and responsibilities described herein is intended only as an allocation of administrative responsibilities between the COUNTY and the ROAD DISTRICT to facilitate the most economical use of limited public resources and not as an enlargement or diminution of either party's underlying duties or obligations lying in statute or common law.

10. Waiver. Any party's failure to insist upon strict compliance with any provision hereof or its failure to enforce any rights or remedy in any instance shall not constitute or be deemed to be a waiver of any provision, right or remedy.

11. Modification. This Agreement may be modified by mutual agreement, in writing, by the parties hereto.

12. Severability. It is mutually agreed by and between the parties hereto that the provisions of this Agreement are severable. If any provision, paragraph, section, subdivision, clause, phrase, or word of this Agreement if for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.

13. Entire Agreement. It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements in negotiations between the parties relating to the subject matter hereof.

14. Jurisdiction and Venue. This Agreement shall be interpreted and construed according to the laws of the State of Illinois. Venue for any action arising from this Agreement shall be in the 22<sup>nd</sup> Judicial Circuit Court, McHenry County, Illinois.

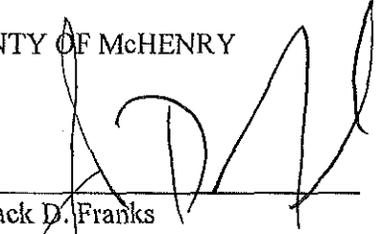
15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns; provided, however, that neither party hereto shall assign any interest hereunder without written consent and approval of the other and any such assignment, without said prior written consent and approval shall be null and void and of no force or effect.

16. Authorized Signatory. The parties signing on behalf of the COUNTY and the ROAD DISTRICT represent that they have full and complete authority and are legally authorized to do so.

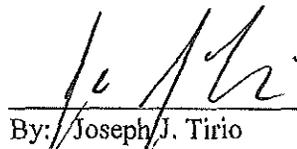
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IN WITNESS WHEREOF, the parties have executed this INTERGOVERNMENTAL AGREEMENT on the dates indicated.

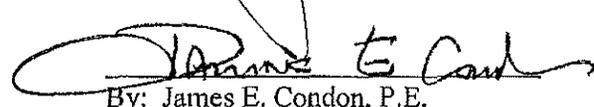
COUNTY OF McHENRY

  
By: Jack D. Franks  
Its: County Board Chairman  
Dated: 8/17/20

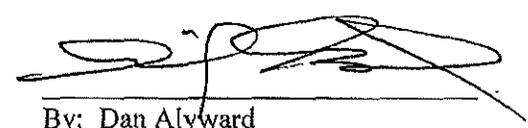
ATTEST

  
By: Joseph J. Tirio  
Its: County Clerk  
Dated: 8/18/20

McHENRY TOWNSHIP  
ROAD DISTRICT

  
By: James E. Condon, P.E.  
Its: Highway Commissioner  
Dated: 7/8/2020

ATTEST

  
By: Dan Alyward  
Its: Township Clerk  
Dated: 7-8-2020

